

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SHANE CURLEY,

Plaintiff,

Case No. 1:11-cv-1029

v

HON. JANET T. NEFF

LAWRENCE STELMA, et al.,

Defendants.

---

**OPINION AND ORDER**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 alleging that two unidentified parties “maliciously assaulted the Plaintiff” at the Kent County Jail (Dkt 1). Plaintiff’s complaint initially named Kent County Sheriff Lawrence Stelma and the two unidentified parties as Defendants, but Defendant Stelma has since been dismissed (Dkt 34). On August 6, 2012, the Magistrate Judge issued a Report and Recommendation (R & R), recommending that Plaintiff’s claims against the two unidentified defendants be dismissed for failure to timely effect service (Dkt 35). The matter is presently before the Court on Plaintiff’s objections to the Report and Recommendation (Dkt 38). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

In the Report and Recommendation, the Magistrate Judge correctly stated that Federal Rule of Civil Procedure 4(m) indicates that if service of the summons and complaint “is not made upon a defendant within 120 days after the filing of the complaint, ‘the court—on motion or on its own after notice to the plaintiff— must dismiss the action without prejudice against that defendant or order that service be made within a specified time’” (Dkt 35 at 1) (citing FED. R. CIV. P. 4(m)). The Magistrate Judge further acknowledged that, “[i]f the plaintiff demonstrates good cause for such failure, however, the court ‘must extend the time for service for an appropriate period’” (*id.*).

In looking at the specific facts of this case, the Magistrate Judge correctly determined that Plaintiff failed to serve the unidentified defendants within 120 days after the filing of his complaint. Plaintiff does not dispute this finding. Furthermore, the existing complaint still does not name the two unidentified defendants, making any inquiry into the Rule 4 “good cause” analysis irrelevant.

Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

**IT IS HEREBY ORDERED** that the Objections (Dkt 38) are DENIED and the Report and Recommendation (Dkt 35) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Dated: November 15, 2012

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge